IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA Nos. 13, 14 and 103 of 1997

Judgment reserved on 9.5.2007

Date of decision 17.5.2007

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(1) Kamal Abrol versus Bhagwan Dass & others

(2) Kamal Abrol versus Bhagwan Dass & others

(3) Hindustan Petrolium Corpn. & another versus Bhagwan Dass and others.

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?[1]

For the appellants: (see overleaf)
For the respondents : (see overleaf)

Surjit Singh, Judge

These three appeals arise out of the same judgment and decree, i.e. judgment and decree dated 27.12.1996, of the learned District Judge and so they are being disposed of by a common judgment.

2. Appeals No. 13 and 14 of 1997 have been filed by Smt. Kamal Abrol, who was impleaded as defendant No. 4 in the main suit. She shall hereinafter be referred to as defendant No. 4. Appeal No. 103 of 1997 has been filed by Hindustan Petroleum Corporation Ltd., which was impleaded as defendant No. 3 in the suit. So the appellant in this appeal shall be referred to as defendant No. 3. Respondents No. 1 and 2 in all the

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[1] **Whether reporters of the local papers may be allowed to see the judgment?**

three appeals had filed the suit and, therefore, they shall be referred to as the plaintiffs. Union of India, The Oil Selection Board and Abhey Singh, respondents in all the three appeals, were impleaded as defendants No. 1, 2 and 5, respectively, in the suit, therefore, they shall be referred to as such in the judgment.

3. First the relevant facts may be noticed. Defendant No. 3 Hindustan Petroleum Corporation invited applications through a public notice for appointment of distributor / dealer for Liquefied Petroleum Gas (LPG) with place of business at Kangra. As per notice, unemployed Graduates, who were residents of Kangra District and having family income of not more than Rs.24,000/- per annum, were eligible. There were a couple of more eligibility conditions, which are not relevant for deciding the appeals and so the same need not be stated. The plaintiffs (who had constituted a partnership concern) and defendants No. 4 and 5 were found eligible along-with some other persons. They were called for interview. Finally a panel of three candidates, including the plaintiffs (together as one candidate on account of their being a partnership concern), defendants No. 4 and 5, was prepared by the Selection Board, i.e. defendant No. 2, and submitted to defendant No. 3 for appointment of one of them as dealer / distributor. Name of defendant No. 4 was at serial number one in the selection list. She was appointed as dealer / distributor by defendant No. 3. The plaintiffs challenged her appointment, inter alia, on the grounds that she was not a resident of Kangra District and her family income was also more than Rs.24,000/- per annum.

4. Before the suit was filed, the plaintiffs and defendant No. 5, whose names also figured in the selection list, filed two separate writ

petitions in the High Court of Punjab & Haryana. Those writ petitions were dismissed with the finding that disputed questions of fact were involved and, therefore, the appropriate remedy was to approach the Civil Court. The plaintiffs then filed the suit out of which these appeals have arisen. Prayer was made for canceling the appointment of defendant No. 4 as distributor / dealer. Issuance of mandatory injunction directing defendants No. 2 and 3 to appoint the plaintiffs as distributor / dealer, after cancellation of the distributorship / dealership of defendant No. 4, was also sought.

5. Suit was contested by defendant No. 2, i.e. the Selection Board, defendant No. 3, i.e. Hindustan Petroleum Corporation, and defendant No. 4 Kamal Abrol. Separate written statements were filed by these three defendants. Defendants No. 2 and 3 pleaded that since the writ petitions were filed in the High Court of Punjab & Haryana at Chandigarh and those were dismissed on the ground that disputed questions of facts were involved, the Civil Court at Chandigarh alone had the territorial jurisdiction to decide the suit. Defendant No. 4 pleaded that the Civil Court in Kangra District, where the suit had been filed, did not have the territorial jurisdiction as no part of cause of action had arisen within the jurisdiction of that Court.

6. Other preliminary objections, raised by the defendants, were that the plaint did not disclose any cause of action, plaintiffs were not entitled to the relief of permanent prohibitory injunction as also the mandatory injunction as asked for, the suit was bad for mis-joinder of Union of India and also non-service of statutory notice on the Selection Board, the plaintiffs were estopped to file the suit, the plaintiffs had no cause of action and the Civil Court could not sit over the decision of the Oil Selection Board.

7. On merits defendant No. 2 pleaded that as per certificate of residency, produced by defendant No. 4, she was resident of Kangra District and her family income was also below Rs.24,000/- per annum and, therefore, she had been found eligible. Defendant No. 3 pleaded that the appointment of defendant No. 4 was made on the basis of selection done by defendant No. 2 and also after scrutinizing the entire record, including the certificates of residence and income and there was nothing wrong with her appointment.

8. Defendant No. 4 denied that she was not resident of Kangra or her family income was more than Rs.24,000/- per annum. She stated that she was resident of village Bir, Tehsil Baijnath, District Kangra and certificate to this effect had been issued in her favour on 9.9.1985 by the Executive Magistrate. It was stated that defendant No. 4 was a member and share-holder of Jaisantoshi Mahila Carpets Manufacturers & Traders Society Bir in Kangra District since December, 1979. It was also stated that the husband of defendant No. 4 was also a member of Bir Cooperative Agricultural Service Society since 30.6.1981. Father-in-law of this defendant was stated to be member and share-holder of Bir Cooperative Tea Factory since 19.8.1961. Mother-in-law of this defendant was stated to be member of village Bir Mahila Mandal. It was also stated that the defendant was possessed of a number of certificates issued by several authorities indicating that she was resident of village Bir.

9. Trial Court framed a number of issues arising out of the pleadings and tried the suit. On the conclusion of trial, it was held that defendant No. 4 was not resident of Kangra District. Her income was, however, held to be less than Rs.24,000/- per annum. It was further held

that defendant No. 5 was also not eligible for selection as his income was more than Rs.24,000/- per annum. On account of the finding that defendant No. 4 was not resident of Kangra, it was held that her appointment as dealer was illegal and null and void. Civil Court was held to have had the jurisdiction to try the suit. The plaintiffs were held to have had the cause of action as also locus standi to file the suit. Plea of mis-joinder of Union of India as defendant, as raised by the defendants, was also dismissed.

10. With the aforesaid findings the trial Court passed a declaratory decree that the selection of defendants No. 4 and 5 by defendant No. 2 was illegal and null and void as these two defendants did not fulfil the eligibility criteria. However, the prayer of the plaintiffs for issuance of mandatory injunction directing defendants No. 1 to 3 to appoint them as distributors / dealers, was dismissed and it was held that it was for the defendants No. 1 to 3 to take decision whether the plaintiffs could be appointed as distributors / dealers on the basis of the selection already made or fresh process was required to be initiated for appointment of distributor / dealer.

11. Two appeals were filed against the aforesaid decree of the trial Court; one by the plaintiffs, who were aggrieved by the dismissal of their prayer, for issuance of mandatory injunction directing defendants No. 1 to 3 to appoint them (plaintiffs) as distributors / dealers on the basis of the selection already made and the second by defendant No. 4 challenging the declaration that her appointment as distributor / dealer was illegal and null & void. The learned District Judge dismissed the appeal filed by defendant No. 4 and affirmed the findings returned by the trial Court. However, the

appeal filed by the plaintiffs was accepted and the decree of t he trial Court was modified and in addition to the relief of declaration granted by the trial Court in favour of the plaintiffs, further relief in the form of direction to defendants No. 1 to 3 to act on the basis of the selection already made and merit-list prepared on the basis of such selection, was granted in favour of the plaintiffs.

12. Aggrieved by the decree of the learned District Judge, three appeals were filed in this Court, two by defendant No. 4 - one challenging the order of dismissal of her appeal and the other challenging the order of acceptance of the appeal filed by the plaintiffs and the third by defendant No. 3 challenging the decree directing it to act in accordance with the selection already made. These appeals were admitted on the following substantial questions of law:-

> "1. Whether both the learned courts below were right in holding that courts at Dharamsala had jurisdiction to try the suit contrary to the provisions of Section 20 of the Code of Civil Procedure when admittedly the Oil Selection Board, Hindustan Petroleum Corporation Limited did not have their place of business or work in Kangra?
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> 2. Whether both the learned courts below were right in holding that the order passed in Civil Revision No. 232/90 by the Hon'ble High Court amounted to conferring of jurisdiction on the learned courts below when the question of territorial jurisdiction was neither raised nor decided in the proceedings which were limited only to the refusal of injunction to the respondent – plaintiff?

3. Whether the judgment and decree of both the learned courts below is sustainable in view of the fact that grant of licence / dealership for distribution of liquefied petroleum gas is at best a privilege and not enforceable right and whether in view of this settled legal proposition, the suit in question was maintainable?
4. Whether the judgment and decree of the learned courts below can be sustained in the admitted position that there were no allegations of mala fide or arbitrary against the oil selection board which had approved the grant of licence for distribution for the appellant / defendants.
5. Whether the judgment and decree of both the learned courts below can be sustained when on an ex facie reading of the evidence of the plaintiff / respondent itself showed that Ex. PW 9/A had been obtained by the plaintiff / respondent in collusion with the revenue officer?
6. Whether the judgment and decree of the learned courts below can be sustained when it has been admitted by PW. 9 that the order Ex. PW 9/A had been passed in gross and flagrant violation of the provisions of natural justice, without any enquiry, without any notice and on the same day, on the basis of some information furnished by the respondent / plaintiff and without any independent enquiry?
7. Whether the judgment and decree of the learned courts below can be sustained on the basis of condition of residency was a mandatory condition when it had not been established that it was so?
8. Whether the learned court below was right in allowing only a part of the application under Order 41 rule 27 of the Code of Civil procedure completely ignoring the other documents and whose authenticity could not be doubted?

9. Whether the learned Appellate Court was right in granting injunction directing original defendants No. 1 to 3 to make the allotment only in favour of the plaintiff / respondent?"

13. Appeals were heard and decided by this Court vide judgment dated 21.8.2002. This Court while dealing with questions No. 1 and 2, reproduced above, held that the Civil Court in Kangra District had the territorial jurisdiction. With regard to questions No. 3 and 9, this Court gave the finding that the suit for mandatory injunction was not competent and the Appellate Court erred in issuing the mandatory injunction. Question No. 4 was answered in favour of the plaintiffs. As regards questions No. 5 and 6, it was held that the term 'residence' includes both permanent residence and temporary residence and since the husband of the plaintiff was permanent resident of village Bir and he had his landed property and ancestral house in village Bir and there was nothing on the record showing that defendant No. 4 had separated from her husband, she too was a permanent resident of village Bir and hence eligible for appointment as distributor / dealer. As regards question No. 7, it was held that the condition regarding residency of Kangra was mandatory. Question No. 8 was answered against defendant No. 4 with the observation that she did not press the same during the course of the hearing of the appeals.

14. Plaintiffs went in appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the term 'resident of Kangra District' used in the eligibility criteria meant actual / de facto resident and not just de jure resident and, therefore, the finding of this Court that defendant No. 4 was permanent resident of Kangra and hence eligible for appointment as distributor / dealer, was not sustainable and that in fact what was required

to be determined was whether defendant No. 4 was actual resident of Kangra. With this finding the Hon'ble Supreme Court set aside the judgment and decree passed by this Court and remanded the matter for fresh consideration of the appeals in the light of the interpretation given by it (the Hon'ble Supreme Court) to the term ' resident of Kangra'.

15. Judgment dated 21.8.2002 of this Court having been set aside in its entirety by the Hon'ble Supreme Court, all the substantial questions of law, on which the appeals were admitted, are required to be determined afresh. In addition to the questions already formulated, one more substantial question of law arises in the light of the interpretation of term 'resident of Kangra' given by the Hon'ble Supreme Court. Defendant No. 4, who argued her matter in person and the counsel representing the plaintiffs and defendants No. 2 and 3 were informed that in the light of the interpretation of the term 'resident of Kangra' given by the Hon'ble Supreme Court, one more substantial question of law was required to be formulated and that question was whether defendant No. 4 was the actual resident of Kangra District, when she sought appointment as distributor / dealer pursuant to the notice inviting applications, got published by defendants No. 2 and 3. The question is formally formulated as follows:-

> Whether defendant No. 4 was actual resident of Kangra District, when she applied for appointment as distributor / dealer?

16. Parties have been heard at length. Record has also been perused.

17. First I will take up the additional substantial question of law formulated in the light of the interpretation given by the Hon'ble Supreme Court to the term 'resident of Kangra'. Defendant No. 4 submitted that in

view of the interpretation given by the Hon'ble Supreme Court to the term 'resident of Kangra', she wanted to lead additional evidence to prove that she was actual / de facto resident of Kangra District. She stated that she had made two applications in the Court of learned District Judge also for leading additional evidence by way of certain documents, but the learned District Judge partly allowed her prayer permitting her to prove pedigree table and one more document, but her prayer for proving the certificate that she was member of a Cooperative Society known as Jaisantoshi Mahila Carpets Manufacturers & Traders Society Ltd. Baijnath, District Kangra and also the affidavit regarding her marriage with Yashpal Abrol, who owns landed property and a house in village Bir of Tehsil Baijnath of District Kangra were not allowed to be proved by the learned district Judge. She stated that she has filed an application in this Court under Order 41 Rule 27 of the Code of Civil procedure, i.e. C,.M.A. No. 239 of 2007, for proving the affidavit of her marriage, the certificate of her being a member of the aforesaid Cooperative Society and also one Will, executed by her father-in-law, in respect of his house situate in Mandi, which as per contents of the Will, has been bequeathed exclusively to her mother-in-law.

18. The documents sought to be proved by way of additional evidence, are not relevant for determining the question whether defendant No. 4 is actual resident of village Bir of District Kangra. The affidavit of marriage, sworn in the year 1977 is available on the record of the trial Court at pages 775 to 779. Though in this affidavit the address of the husband of defendant No. 4 is shown to be of village Bir, the affidavit itself was sworn at Mandi. It may be stated here that the case of the plaintiffs was that defendant No. 4 was actual resident of Mandi town where her father-in-law

had a house and that she was registered as a voter at Mandi and was also employed at that place as a teacher in D.A.V. Public School. Since the affidavit in no way indicates that defendant No. 4 or her husband was actual resident of village Bir in District Kangra, the same may not be said to be relevant.

19. Similarly the certificate that defendant No. 4 is member of a Cooperative Society with its headquarter at Bir, will not prove that she actually resides in that village. The certificate would simply show that she is a member of the Cooperative Society. The proof of this fact would not directly or even presumptively show that she actually resides in village Bir.

20. Will executed by the father-in-law of defendant No. 4 with respect to his house in Mandi town is also not relevant for proving that she is actual resident of village Bir. The Will will prove only this much that the father-in-law of defendant No. 4 had a house in Mandi town, which by virtue of the Will executed by him has devolved upon his wife to the exclusion of defendant No. 4 and her husband. But that would not mean that defendant No. 4 or her husband stand ousted from that house. Earlier when the father of the husband of defendant No. 4 was alive, he was its owner and after his death the mother-in-law of defendant No. 4 is the owner. If defendant No. 4 was staying in the house earlier, when her father-in-law was alive, it can legitimately be presumed that there might not have been any change in the situation after the death of her father-in-law and the devolvement of the ownership of the house on her mother-in-law under the will. This is especially so when there is no mention in the application to this effect nor evidence to this effect is sought to be led.

21. In view of the above stated position, it is held that allowing the application for additional evidence will not serve any purpose of defendant No. 4, but will only prolong the litigation, which has been going on since 1990.

22. A perusal of the evidence adduced by the parties in the trial Court suggests that they knew that what was required to be proved was whether defendant No. 4 was actual resident of village Bir in Kangra District or only a de jure resident on account of her husband having his ancestral landed property and a house in that village. The plaintiffs adduced in evidence voter lists of village Bir in Kangra District as also of Mandi town to show that she and her husband were not registered as voters in village Bir, but were registered as such in Mandi town. They also led evidence to show that defendant No. 4, her husband and their children were included in the members of the family of her father-in-law in the ration card, which her father-in-law obtained for drawing ration from a Depot at Mandi. They also tried to show that defendant No. 4 herself was employed at Mandi as a teacher in D.A.V. Public School and her children were also studying in schools at Mandi.

23. Defendant No. 4 despite having been afforded several opportunities for a period of over one year, did not lead any evidence to show that she was actually residing in village Bir. She did not examine any resident of village Bir except DW-3 Krishan Kumar, who stated that defendant No. 4 earlier lived in Mandi when her father-in-law was employed there and that thereafter she started visiting Bir and staying there for a day or two. He made this statement in the year 1992. He did not say as to when did defendant No. 4 started visiting village Bir and staying there for a

day or two in a week. Thus, the statement is too vague to prove that defendant No. 4 was resident of village Bir at the time when she applied for appointment as dealer / distributor. May be that she started visiting the village and staying there for a day or two in a week only after her appointment as distributor / dealer of L.P.G. at Kangra. Otherwise also visits, even though regular and stay for a day or two in a week, could not mean that defendant No. 4 is actual resident of village Bir.

24. Defendant No. 4 in her own statement as DW-1 admitted that she served for two to two-and-a-half years in D.A.V. Public School as a teacher from 1987 onwards. She also admitted that her children were born at Mandi. She also admitted that she and her husband are registered as voters at Mandi. She did not deny that her name was included in the ration card issued in the name of her father-in-law authorizing him to draw ration at Mandi. She did not deny that she and her husband were not registered as voters in village Bir of Kangra District.

25. The plaintiffs led positive evidence indicating that defendant No. 4 was not actual resident of village Bir in Kangra District. PW-2 Om Parkash, a Clerk from the office of Municipal Committee, Mandi proved voter list pertaining to the period from 1982 to 1984 in which defendant No. 4 and her husband Yash Pal are registered as voters. Photostat copy of the voter list is Ext. PW-2/B.

26. PW-3 Dharam Lal, Tehsildar Election Mandi, proved the voter lists for the years 1981, 1982, 1983, 1984, 1986 and 1987 and testified that in these voter lists defendant No. 4 and her husband are registered as voters being residents of Mandi town.

27. PW-4 Ram Parkash proved the voter lists from 1983 to 1987 pertaining to village Bir in which names of defendant No. 4 and her husband Yash Pal do not figure.

28. PW-7 Makholi Ram, Secretary, Gram Panchayat Bir, appeared with the 'Parivar' register and stated that names of defendant No. 4 or her husband or her father-in-law do not figure in the said register.

29. PW-10 Piare Lal testified that he had been President of village Bir since 1982 and that defendant No. 4 was not resident of village Bir. In the cross-examination he stated that he had seen the husband of defendant No. 4 for the first time in the Court.

30. PW-11 Kali Dass, an employee from the Food & Supplies Office, Mandi, who appeared with the record, stated that ration cards were prepared in the year 1982, 1986 and 1990 and that in the ration card pertaining to Shri Prem Dass Abrol, father-in-law of defendant No. 4, who was resident of House No. 26/1, Khalyar, Mandi, five adults and two children are entered in the card prepared in the year 1982 and that in the card prepared in the year 1986 seven adult members are shown and in the card pertaining to the year 1990, which is in the name of Kamla Abrol, wife of Prem Dass Abrol (mother-in-law of defendant No. 4) five adults and one child are entered. The witness also proved application Ext. PW-11/C, dated 31.1.1986 and Ext. PW-11/D, dated 15.4.1990, submitted for the issuance of ration cards, besides proving the ration cards Ext. PW-11/A, Ext. PW-11/B. In these applications names of defendant No. 4 and her husband find mention.

31. Defendant No. 4 also proved a few documents. Ext. DA is the copy of residency certificate. As per this certificate, Tehsildar has certified

that defendant No. 4 is resident of village Bir for at-least three years. The date below the signature of the Tehsildar appears to be 25.2.1988. The certificate purports to be based on the report of the Patwari, which is recorded below the certificate itself. Now as per this report of the Patwari, defendant No. 4 is permanent resident of Bir and not that she is actual resident of that village. This report is supposed to have been issued by the Patwari on the basis of the entries in the revenue papers and the pedigree table in which the husband and the father-in-law of defendant No. 4 are recorded as owners of certain land, situate in village Bir.

32. Another document proved by defendant No. 4 is an entry in the Parivar register of Gram Panchayat Bir. As per this entry, defendant No. 4 and her husband are recorded as members of the family of her husband's father Prem Dass. However, in column No. 10 it is written that all the members of the family, including its head Prem Dass, reside outside the village. The document, thus, instead of proving the defendant's case, proves the plaintiffs' plea that defendant No. 4 was not actual resident of Kangra and hence not eligible for appointment as distributor / dealer.

33. The above discussed evidence sufficiently proves that defendant No. 4 was not actual resident of village Bir in Kangra District when she applied for appointment as dealer / distributor and was appointed as such, but was resident of Mandi town in the house of her father-in-law Prem Dass Abrol.

34. Additional substantial question of law, formulated hereinabove, is answered accordingly.

Questions No. 1 & 2

35. Defendant No. 4 challenged the territorial jurisdiction of the Civil Court at Kangra on the ground that no cause of action had taken place within the area falling in the jurisdiction of Kangra Civil Court.

36. The objection cannot be upheld for two reasons; firstly on account of the defendant No. 4 having been appointed dealer / distributor for Kangra town and she having started her business as dealer / distributor of L.P.G. pursuant to her appointment at Kangra, the cause of action in part arose at Kangra itself and secondly defendant No. 4, after having set up the business of distributorship / dealership, had her place of business at Kangra and because of this also, the Civil Court of Kangra had the territorial jurisdiction so far as defendant No. 4 is concerned.

37. The other two defendants, i.e. defendant No. 2 and 3, challenged the territorial jurisdiction of Kangra Civil Court on the plea that earlier the plaintiffs and defendant No. 5 had filed writ petitions in the High Court of Punjab & Haryana at Chandigarh, which were dismissed in limine with the observation that since disputed questions of fact were involved and Civil Court was the appropriate remedy, the Civil Court at Chandigarh alone had the territorial jurisdiction. They did not plead that the Civil Court at Kangra did not have jurisdiction on account of any other reason that is to say their (defendant No. 2 and 3) having no place of business within the territorial jurisdiction of the said Court or no part of the cause of action having been arisen in its territorial jurisdiction.

38. For determining the question of territorial jurisdiction of Civil Court what is required to be seen is whether the defendant / each of the defendants where there are more than one, at the time of the

commencement of the suit actually and voluntarily resides or carries on business or personally works for gain within the territorial jurisdiction of that Court or the cause of action wholly or in part arises within the jurisdiction of the concerned Court. In the instant case defendants No. 2 and 3 do not say that they do not carry on business within the jurisdiction of the Civil Court at Kangra or that no part of cause of action has arisen in the territorial jurisdiction of the said Court. Their plea is that because the plaintiffs and defendant No. 5 had earlier filed writ petitions in the High Court of Punjab & Haryana at Chandigarh, so the Civil Court at Chandigarh alone has the jurisdiction. This plea has no relevance for determining the question of territorial jurisdiction. Resultantly questions No. 1 and 2 are answered in favour of the plaintiffs.

Questions No. 3 and 9

39. Defendants No. 2 and 3 invited applications for appointment as distributor / dealer of L.P.G. Defendant No. 2 was Selection Board and its job was to select from amongst the applicants, three most suitable persons and to prepare a panel and submit the same to defendant No. 3 for taking final decision. Defendant No. 2 carried out the selection process and prepared a panel of three applicants, i.e. the plaintiffs (as one of the applicants), defendant No. 4 and defendant No. 5 and submitted the same to defendant No. 3 for appointing one of them, whom it considered to be the most suitable. Defendant No. 3 appointed defendant No. 4 as distributor / dealer after considering all the three names. Selection of an applicant or the inclusion of his / her name in the panel by itself does not entitle him / her to appointment as distributor or dealer even if all other persons, recommended by the Selection Board, are found to be not suitable

or ineligible by defendant No. 3. Even in such a situation final decision whether to appoint such an applicant as distributor / dealer rests with the defendant No. 3, which it is required to take in accordance with its bye laws, regulations and guidelines etc. Therefore, mandatory injunction cannot be issued to it to appoint such an applicant, though a direction can be issued to it to consider such an applicant for appointment on account of his name being there in the panel prepared by the Selection Board. The questions are answered accordingly.

Question No. 4

40. Case of the plaintiffs is plain and simple. Their allegation is that defendant No. 4 could not have been appointed as distributor / dealer on account of her not fulfilling the condition of residency, which was part of the eligibility criteria. If they are able to show that in fact defendant No. 4 did not fulfil this eligibility condition, they would succeed in their prayer for declaration that the appointment of defendant No. 4 is illegal, null and void, without proof of any arbitrariness or mala fide on the part of defendants No. 2 and 3. Question is answered accordingly.

Questions No. 5 and 6

41. Ext. PW-9/A is the certificate dated 5.8.1989, issued by the Executive Magistrate, Baijnath, thereby canceling the residency certificate dated 25.2.1988 issued by him in favour of defendant No. 4. As per this certificate, defendant No. 4 is not a resident of village Bir, Tehsil Baijnath and, therefore, the residency certificate issued earlier on 25.2.1988 has been cancelled. The certificate was proved by the Executive Magistrate, namely PW-9 Salig Ram. The witness admitted that he had issued this certificate of cancellation of an earlier certificate of residency, on an

application filed by the plaintiffs, without issuing any notice to defendant No. 4. Because of the non-association of defendant No. 4 in the proceedings for cancellation of the earlier residency certificate, this certificate (Ext. PW-9/A) cannot be said to be a valid certificate.

42. However, this finding does not mean that defendant No. 4 would be deemed to be resident of village Bir on the strength of the certificate dated 25.2.1988 Ext. DA. The certificate, as already demonstrated here-in-above, was issued on the report of the Patwari, which was to the effect that defendant No. 4 was the permanent resident of village Bir and not that she was the actual resident of that place. Otherwise also, the certificate Ext. DA is to be used only as a piece of evidence and not as conclusive proof of the facts stated therein. The entire gamut of evidence as discussed and referred to hereinabove, proves that defendant No. 4 is not an actual resident of village Bir. The two Courts below have also given this finding. This is a finding of fact and is concurrent. I have also found, on appreciation of evidence, that defendant No. 4 was not an actual resident of Kangra District at the time when she applied for appointment as distributor / dealer.

43. In view of the above discussion, it is held that though the certificate Ext. PW-9/A is not valid, the fact does not in any way affect the concurrent finding of the two Courts below as also the finding recorded by this Court hereinabove that defendant No. 4 was not permanent resident of Kangra District when she sought appointment as distributor / dealer of L.P.G. for Kangra town. Questions are answered accordingly.

Question No. 7

44. The eligibility criteria specified in the notice inviting the applications clearly stated that the applicant should be a resident of Kangra District. Therefore, it cannot be said that the condition regarding the candidate being resident of Kangra was not essential or mandatory. Question is answered accordingly.

45. As an upshot of the above discussion and findings, R.S.A. No. 14 of 1997 is dismissed. R.S.A. No. 13 of 1997 and R.S.A. No. 103 of 1997 are partly accepted and the decree as passed by the learned District Judge (first Appellate Court) is modified to the extent that instead of a direction to defendant No. 3 to appoint the plaintiffs / respondents as distributors / dealers of L.P.G. for Kangra, based on the selection and recommendation made by defendant No. 2, a decree of mandatory injunction directing defendant No. 3, i.e. The Hindustan Petroleum Corporation, to consider the names of the plaintiffs for appointment as distributors / dealers of L.P.G. for Kangra, on the basis of the selection and recommendation already made by defendant No. 2, is passed.

May 17, of 2007 (BC) **(Surjit Singh)**
Judge

(1) RSA No. 13 of 1997

Kamal Abrol …….. Appellant

Versus

Bhagwan Dass and others …….. Respondents.-

For the appellant : Ms. Kamal Abrol, appellant in person.

For the respondents : Mr. K.D. Sood and Mr. Sanjeev Sood, Advocates, for respondents No. 1 &2.

Mr. Rajesh Mandhotra, Advocate vice counsel for respondents No. 4 and 5.

(2) RSA No. 14 of 1997

Kamal Abrol …….. Appellant

Versus

Bhagwan Dass and others …….. Respondents

For the appellant : Ms. Kamal Abrol, appellant in person.

For the respondents : Mr. K.D. Sood and Mr. Sanjeev Sood, Advocates, for respondents No. 1 &2.

Mr. Rajesh Mandhotra, Advocate vice counsel for respondents No. 4 and 5.

(3) RSA No. 103 of 1997

Hindustan Petroleum Corporation Ltd. ……..Appellant

Versus

Bhagwan Dass and others …….. Respondents.

For the appellant : Mr. Rajesh Mandhotra, vice counsel.

For the respondents : Mr. K.D. Sood and Mr. Sanjeev Sood, Advocates, for respondents No. 1 and 2.

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 14 of 1997

Judgment reserved on 9.5.2007

Date of decision 17.5.2007

Kamal Abrol …….. Appellant

Versus

Bhagwan Dass & others …….. Respondents.

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?[2]

For the appellant : Ms. Kamal Abrol, appellant in person

For the respondents : Mr. K.D. Sood & Mr. Sanjeev Sood, Advocates, for respondents No. 1 & 2.

Mr. Rajesh Mandhotra, Advocate, vice counsel for respondents No. 4 and 5

Surjit Singh, Judge.

For judgment see judgment rendered in RSA No. 13 of 1997 (Kamal Abrol versus Bhagwan Dass and others), whereby RSA Nos. 13, 14 and 103 of 1997 have been disposed of.

May 17, 2007 (BC) (Surjit Singh), J.

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[2] **Whether reporters of the local papers may be allowed to see the judgment?**

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 103 of 1997

Judgment reserved on 9.5.2007

Date of decision 17.5.2007

Hindustan Petroleum Corporation Ltd…….. Appellant

Versus

Bhagwan Dass & others …….. Respondents.

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?[3]

For the appellant : Mr. Rajesh Mandhotra, vice counsel
For the respondents : Mr. K.D. Sood & Mr. Sanjeev Sood, Advocates, for respondents No. 1 & 2.

Ms. Kamal Abrol, respondent No. 3 in person.

Surjit Singh, Judge.

For judgment see judgment rendered in RSA No. 13 of 1997 (Kamal Abrol versus Bhagwan Dass and others), whereby RSA Nos. 13, 14 and 103 of 1997 have been disposed of.

May 17, 2007 (BC) **(Surjit Singh), J.**

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[3] **Whether reporters of the local papers may be allowed to see the judgment?**